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Agenda item 123

Administration of justice at the United Nations

Report of the Fifth Committee

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I. Introduction

1. At its 19th plenary meeting, on 20 September 2002, the General Assembly, on the recommendation of the General Committee, decided to include in the agenda of its fifty-seventh session the item entitled "Administration of justice at the United Nations" and to allocate it to the Fifth Committee.

2. The Fifth Committee considered the item at its 41st, 42nd and 45th meetings, on 5, 6 and 28 March 2003. Statements and observations made in the course of the Committee's consideration of the item are reflected in the relevant summary records (A/C.5/57/SR.41, 42 and 45).

3. For its consideration of the item, the Committee had before it the following documents:

(a) Report of the Secretary-General on the administration of justice in the Secretariat (A/56/800);

(b) Report of the Secretary-General on the monitoring capacity in the Office of Human Resources Management (A/57/276);

(c) Notes by the Secretary-General transmitting the report of the Joint Inspection Unit entitled "Reform of the administration of justice in the United Nations system: options for higher recourse instances" (A/57/441) and his comments and those of the United Nations System Chief Executives Board for Coordination thereon (A/57/441/Add.1);

(d) Report of the Advisory Committee on Administrative and Budgetary Questions on the administration of justice in the Secretariat (A/57/736);

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(e) Letter dated 8 November 2002 from the President of the United Nations Administrative Tribunal addressed to the Chairman of the Fifth Committee (A/C.5/57/25).

II. Consideration of draft resolution A/C.5/57/L.57

4. At the 45th meeting, on 28 March, the representative of Sweden and coordinator of the informal consultations on the item introduced, on behalf of the Chairman, a draft resolution entitled "Administration of justice in the Secretariat" (A/C.5/57/L.57).

5. At the same meeting, the Committee adopted draft resolution A/C.5/57/L.57 without a vote (see para. 7).

6. After the adoption of the draft resolution, a statement in explanation of position was made by the representative of Morocco, on behalf of the States Members of the United Nations that are members of the Group of 77 and China.

III. Recommendation of the Fifth Committee

7. The Fifth Committee recommends to the General Assembly the adoption of the following draft resolution:

Administration of justice in the Secretariat

The General Assembly,

Recalling section XI of its resolution 55/258 of 14 June 2001,

Recognizing that a transparent, impartial and effective system of administration of justice is a necessary condition for ensuring fair and just treatment of United Nations staff, and important for the success of human resources reform in the Organization,

Having considered the report of the Secretary-General on the administration of justice in the Secretariat,[1]

Having also considered the report of the Joint Inspection Unit entitled: "Reform of the administration of justice in the United Nations system: options for higher recourse instances"[2] and the comments of the Secretary-General and those of the United Nations System Chief Executives Board for Coordination thereon,[3]

Having further considered the report of the Advisory Committee on Administrative and Budgetary Questions[4] and the letter from the President of the United Nations Administrative Tribunal to the Chairman of the Fifth Committee,[5]

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[1] A/56/800.
[2] A/57/441.
[3] A/57/441/Add.1.
[4] A/57/736.
[5] A/C.5/57/25.

Affirming the importance of continuing efforts to ensure that the administration of justice within the United Nations is of the highest standard,

Also affirming the importance of the United Nations as an exemplary employer,

1. *Stresses* the urgent need to ensure effective and expeditious administration of justice in the Organization, and requests the Secretary-General to ensure that the highest standards of efficiency, competence and integrity as well as the principles of fairness and due process serve as the paramount considerations in the system of administration of justice within the United Nations;

2. *Notes with concern* that the related reports were not introduced at its fifty-sixth session, as requested in its resolution 55/258, in addition to being issued late for consideration at its current session;

3. *Regrets* that the present system of administration of justice in the Secretariat continues to be slow, cumbersome and costly;

4. *Also regrets* the serious delays in the appeals process, and requests the Secretary-General to ensure full cooperation and accountability in the internal system of justice of the Department or programme manager whose decision has been challenged by the appellant, at all stages of the process;

5. *Requests* the Secretary-General to take steps to ensure the independence of the United Nations Administrative Tribunal and the separation of its secretariat from the Office of Legal Affairs, to study the possibility of its financial independence and to report thereon to the General Assembly at its fifty-eighth session;

6. *Takes note* of the report of the Secretary-General on the administration of justice in the Secretariat,[1] the report of the Joint Inspection Unit entitled "Reform of the administration of justice in the United Nations system: options for higher recourse instances"[2] and the comments of the Secretary-General and those of the United Nations System Chief Executives Board for Coordination thereon[3] and the report of the Advisory Committee on Administrative and Budgetary Questions;[4]

7. *Endorses* the recommendation of the Advisory Committee contained in paragraph 8 of its report;

8. *Welcomes* the initiative taken by the Secretary-General in requesting the Office of Internal Oversight Services to conduct a management review of the appeals process, and in this regard concurs with the observations and recommendations contained in paragraphs 6 and 7 of the report of the Advisory Committee;

9. *Requests* the Secretary-General, taking due account also of the findings of the Office of Internal Oversight Services, to submit a report containing alternatives on strengthening the administration of justice by means of ensuring transparency and fairness in the provision of justice to staff of the Organization, for consideration by the General Assembly at its fifty-eighth session;

10. *Also requests* the Secretary-General to entrust the Office of Internal Oversight Services with the inclusion in its report of measures to shorten the period required for the disposal of cases, including imposing deadlines at all stages of the process;

11. *Further requests* the Secretary-General to ensure that the Office of Internal Oversight Services includes in its report not only the procedures and functions related to the Joint Appeals Board but also those related to the Panel of Counsel, the Administrative Law Unit and the secretariats of the Joint Appeals Board and the Joint Disciplinary Committee, as well as their impact on and contribution to the administration of justice;

12. *Welcomes* the establishment of the post of Ombudsman to strengthen informal mechanisms for conflict resolution;

13. *Welcomes* the organization of basic legal training courses for new members of the Joint Appeals Board and the Joint Disciplinary Committee, and encourages the Secretary-General to continue his efforts in this regard without additional budgetary implications;

14. *Agrees* that the United Nations Administrative Tribunal should be strengthened through an amendment to its statute requiring that the candidates for the Tribunal possess judicial experience in the field of administrative law or its equivalent within the candidates' national jurisdiction, as recommended in paragraph 13 of the report of the Advisory Committee, and decides to take a decision on this matter at its fifty-eighth session;

15. *Notes* that the staff of the United Nations Secretariat and the specialized agencies are subject to two different systems of administration of justice, and in this regard requests the Joint Inspection Unit to continue to study the possibility of harmonizing the statutes of the United Nations Administrative Tribunal and the Administrative Tribunal of the International Labour Organization, bearing in mind the information contained in paragraphs 39 to 42 of the report of the Secretary-General,[1] for consideration by the General Assembly at its fifty-ninth session;

16. *Requests* the Secretary-General to undertake a more in-depth analysis of the implications of ensuring that the executive heads of organizations collaborate with the staff associations in the development of comprehensive legal insurance schemes to cover legal advice and representation for staff, with a view to ensuring equality of all staff in adversary procedures and the widest possible access of staff to the administration of justice;

17. *Also requests* the Secretary-General to strengthen the Panel of Counsel, as appropriate, taking into account the management review report to be submitted by the Office of Internal Oversight Services;

18. *Affirms* that the functions of staff members appointed to serve on joint bodies in the administration of justice are official in nature and are valuable to the Organization;

19. *Encourages* the Secretary-General to ensure that staff members appointed to serve on joint bodies of the internal justice system are given sufficient time off from their substantive responsibilities to discharge their responsibilities, including adjustment of work in their substantive offices;

20. *Requests* the Secretary-General, in consultation with the Ombudsman and staff representatives, to submit detailed proposals on the role and work of the Panel on Discrimination and other grievances for consideration by the General Assembly at its fifty-eighth session;

21. *Also requests* the Secretary-General to include statistics on the disposition of cases and information on the work of the Panel of Counsel in his annual report on the administration of justice in the Secretariat;

22. *Further requests* the Secretary-General to distribute a hard copy of the annual report of the Panel of Counsel to Member States, upon request;

23. *Requests* the United Nations Administrative Tribunal to submit a comprehensive report on its activities to the General Assembly;

24. *Reiterates its request* to the Secretary-General to establish a clear linkage between the administration of justice and responsibility and accountability in the United Nations Secretariat when decisions of the Administrative Tribunal result in losses to the Organization due to management irregularities;

25. *Also reiterates its request* to the Secretary-General to develop, as a matter of priority, an effective system of personal responsibility and accountability to recover financial losses to the Organization caused by management irregularities, wrongful actions or gross negligence of officials of the United Nations Secretariat that result in judgements of the Administrative Tribunal, and to report thereon to the General Assembly at its fifty-eighth session;

26. *Requests* the Secretary-General to expeditiously finalize and issue an administrative instruction on the implementation of section XI, paragraph 9, of General Assembly resolution 55/258;

27. *Also requests* the Secretary-General to continue to ensure that all decisions affecting the status of the staff should be communicated to the staff members concerned;

28. *Decides* to amend staff rule 110.4 (a) to read "No disciplinary proceedings may be instituted against a staff member unless he or she has been notified, in writing, of the allegations against him or her and of the right to seek the assistance of counsel in his or her defence at his or her own expense and has been given a reasonable opportunity to respond to those allegations", and to make similar amendments in staff rules 210.1 (b) and 310 (d);

29. *Also decides* to amend staff rule 111.2 (i) to read "A staff member may arrange to have his or her appeal presented to the panel on his or her behalf by counsel, at his or her own expense";

30. *Decides* to include in the provisional agenda of its fifty-eighth session the item entitled "Administration of justice at the United Nations".